Redress Programs Relating to Insitutional Child Abuse in Canada

By Goldie Shea

LAW COMMISSION OF CANADA
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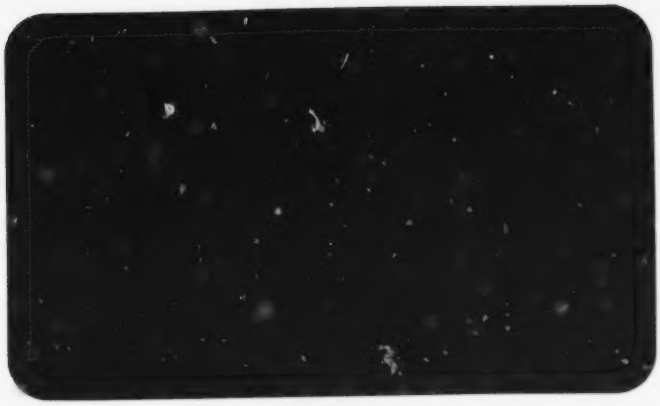

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This paper was prepared for the Law Commission of Canada. The views expressed are those of the author and do not necessarily reflect the views of the Commission. The accuracy of the information contained in the paper is the sole responsibility of the author.

Ce document est également disponible en français sous le titre *Programmes de réparation destinés aux victimes de sévices en établissements au Canada*.

Redress Programs

Relating to

Institutional Child Abuse in Canada

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Methodology

The objective of this report is to provide a survey of the programs that have been established (or offered, as in the case of the Quebec government and the Duplessis Orphans) throughout Canada to provide redress to those individuals who have suffered from institutional child abuse. This list consists of programs that have exhausted their mandate and those that continue to exist for all Canadian jurisdictions.

Each individual compensation program is listed in alphabetical order by province. The description of the program includes a background section detailing the events leading up to the establishment of the compensation scheme. It goes on to describe the process for the validation of awards. The description includes the criteria and administrative process; who makes the decisions and how; and if there is any right of appeal. Finally, it surveys the details of the compensation package indicating the range of benefits available and, where possible, the amount and range of benefits that have actually been provided to the date of October 1, 1999. In some cases, additional information has been provided to ensure that the information is as current as possible prior to publication.

1. Alberta

> *This fear of the feeble-minded was based on the assumption made by a large number of turn-of-the-century commentators that mental deficiency was a cause of a host of social ills. For the middle class, of course, it was a comforting notion to think that poverty and criminality were best attributed to individual weakness rather than to the structural flaws of the economy. This explains why so many otherwise intelligent humanitarians supported the labelling, the segregation, and ultimately the sterilization of those they designated subnormal.*[1]

Background

The *Sexual Sterilization Act*[2] of Alberta was passed in 1928 and revised in 1937 and further in 1942. It established a board composed of four individuals who were appointed by the Lieutenant Governor in Council and which became known as the "Eugenics Board". The *Act* originally empowered the Board to authorize the sexual sterilization of individuals about to be discharged from a mental hospital, providing that the Board was satisfied that "the patient might safely be discharged if the danger of procreation with its attendant risk of multiplication of evil by transmission of the disability to progeny were eliminated"[3]. Consent of the person (or of a spouse, parent or guardian, if the person was incapable of giving a valid consent) was required.

Following amendment in 1937, the Act made specific reference to "psychotic" persons and "mentally defective" persons. The criteria for sterilization were expanded to include not only the risk of transmission of mental disease or disability, but also the risk of mental injury either to the individual or to his or her progeny. Consent of the individual (or if incapable, substitute consent) continued to be required, but only in the case of a psychotic person. To enable the sterilization of a mentally defective person, there was no statutory requirement of consent. The 1942 amendments expanded the power of the Board to authorize sterilization to include cases of neurosyphilis, epilepsy with psychosis or mental deterioration and Huntington's Chorea.

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[1] A. McLaren, *Our Own Master Race: Eugenics in Canada, 1885 – 1945* (Toronto: McClelland & Stewart, 1990) at 37.
[2] S.A. 1928, c. 37; amended subsequently in 1937 and 1942.
[3] See the discussion in T. Caulfield and G. Robertson "Eugenic Policies in Alberta: From the Systematic to the Systemic" (1996) 35 Alta. L. Rev. (No. 1) 59 at 60.

In the ensuing forty-four years in which the Act was in effect, the Board approved 4,725 cases for sterilization, of which 2,822 were actually performed[4]. Many of these were children under the age of puberty. The *Act* was finally repealed in 1972.

In January of 1996 Leilani Muir, an Alberta woman, was awarded damages totalling $740,780.00 for wrongful confinement and wrongful sterilisation in a provincial training school for the mentally defective[5]. Subsequent to that decision, former students who were sterilised filed hundreds of claims against the Alberta government. The Public Trustee administered five hundred of the claims. Parents and guardians have forwarded most claims, as most of the claimants are mentally challenged and cannot present their own.

In June of 1998 the government announced settlements with approximately 500 claimants[6]. The cost of the settlement package was approximately $48 million. To verify these cases, the government established a Settlement Panel to review applications for settlement from those victims of sterilisation under the *Act*.

The process was very simple. Claimants first completed a form outlining the details of their claim. A negotiator was then appointed to work with the claimant and/or his or her representative and attempt to settle the claim. If an agreement could be reached, payment would be made to the claimant and the settlement was then complete. If an agreement could not be reached, claimants had the option of taking their claim directly to the Settlement Panel. The Panel then listened to submissions from the claimants, reviewed all the information related to the claim and proposed a settlement. If claimants were not satisfied with the proposed settlement, they had the option of taking their claim to court.

If the claim was resolved, claimants received $75,000 at the time of settlement and an additional $25,000 after three years if they were living outside institutions at that time. Between June 1996 and November 1999, 635 claims were settled under the process set up under the Public Trustee, by third party negotiation or the Settlement Panel for a total expenditure of $60 million.

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[4] *Ibid.*
[5] *Muir* v. *The Queen in Right of Alberta* (1996), 132 D.L.R. (4th) 695 (Alta.Q.B.).
[6] Government of Alberta, News Release, "Government Settles Another 40 Sterilisation Claims" (27 October 1998).

The Stratton Agreement

In June 1999 the Honourable Joseph Stratton Q.C. was retained by the Government of Alberta to negotiate a settlement with a committee of lawyers acting on behalf of the remaining plaintiffs. The Plaintiffs' Committee co-ordinated negotiations on behalf of 38 law firms, representing a total of close to 250 claimants. The Stratton Agreement was announced on November 2, 1999 and provides for the settlement of the remaining sterilisation lawsuits and a discontinuance of the seventeen representative trials that were scheduled to start in December 1999. It is estimated that the nearly 250 cases settled by the agreement on November 2, 1999 will cost in the range of $82 million bringing the total amount paid to claimants to approximately $142 million. The average settlement amount under the Stratton Agreement is $330,000 per claim. The terms, content and process of the settlement negotiations are confidential.

Of the total of 958 cases brought forward, by November 2, 1999 about 956 have achieved settlement. It is expected that more cases will be brought periodically and those remaining cases are expected to be resolved in the near future. When the Agreement was announced, the Government of Alberta expressed its profound regret to those who suffered as a result of being sterilised.

TABLE 1 SETTLEMENT DETAILS[7]	
1995/96 - Present	
Total Claims Brought Forward	958
Claims Withdrawn	75
Claims Requiring Resolution	883
June 1996 – Present	
Claims settled by the Public Trustee, Third Party Negotiation or the Settlement Panel	625 - $60 million
November 1999	
Claims Settled Under the Stratton Agreement	246 - $82 million
Total settled to date	881 - $142 million

[7] Government of Alberta, News Release 99-033, "Stratton Agreement Concludes Sterilization Negotiations" News Release, (2 November 1999).

2. British Columbia - Jericho Hill

> ... the vulnerability of the children at Jericho Hill School was the product of their failure to acquire language early; this meant that they did not have values instilled in them in the same way as hearing children do; it often meant increased vulnerability to any staff at the school who may have been disposed to abuse the children; it meant that the institution was more susceptible to the development of a culture of abuse; and it meant that the children usually did not have the ability or the means to communicate with or complain effectively to parents, teachers, physicians, police or social workers about sexual abuse.[8]

Background

From the early 1950s until 1992, Jericho Hill School was the residential school in the province for Deaf children from kindergarten to grade 12. Prior to 1979, blind children were also enrolled in the school. The school was a "provincial school" as defined by the governing legislation[9]. A provincial school is directly operated and maintained by the Ministry of Education, unlike most schools that are managed by district school boards for the district in which a school is located.

In the spring of 1992, in response to complaints regarding the institution's operation and management, the office of the provincial Ombudsman undertook an investigation of allegations of sexual, physical and emotional abuse of students at the school. The Ombudsman's report was published in November, 1993. The Ombudsman concluded that abuse had occurred and made eleven recommendations to the provincial government.[10] The report of the Ombudsman recommended that the province formally apologise to all those abused at the school. It also recommended that a non-confrontational process be established to determine compensation for victims of abuse. In response to some of the Ombudsman's recommendations, the Government of British Columbia, in June of 1993, appointed Thomas Berger, Q.C. as special counsel to inquire into allegations of sexual abuse at the school.

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[8] Thomas Berger, *Report of the Special Counsel Regarding Claims Arising out of Sexual Abuse at Jericho Hill School* (Victoria: Ministry of the Attorney General, March 1995) at 7.
[9] Currently the *School Act*, R.S.B.C. 1996, c. 42.
[10] Ombudsman of British Columbia, *Abuse of Deaf Students at Jericho Hill School: Report No. 32* (Victoria: B.C. Ombudsman, 1993).

Mr. Berger investigated the allegations and concluded that sexual abuse was at times widespread at the residence at Jericho Hill School and that it went on over a period of many years. He went on to conclude that from the 1950s, extending over approximately a 35-year period, there was sexual abuse by some child care staff, sexual abuse by some older children of younger children, and that some of these younger children (once they became senior students) sexually abused new entrants.[11] The Berger Report discussed three main issues:

1. The extent and severity of sexual abuse at the school;
2. The Province's responsibility for the abuse; and
3. Remedies for resolving claims.

According to the Berger Report, the provincial government was aware of the problems at the school as early as 1982, yet the actions taken to address the situation were deemed inadequate. It was determined that the majority of the claims arose during the period of 1978 – 1987. It was in 1978 that the province made the decision to house all of the children, both sexes and all age groups, in the same dormitory. It is this act that has been cited as the point where the sexual abuse became most prolific. The report was released in 1995 and recommended that the province accept responsibility for all claims of sexual abuse suffered by deaf students who attended the school. The report also made detailed recommendations for a compensation scheme to be established to compensate for pain and suffering but not for loss of earning capacity or for punitive damages.

In a ministerial statement made on June 28, 1995, the then Attorney General, Colin Gabelmann, acknowledged the allegations of sexual abuse at the school as well as the provincial government's responsibility to ensure the well-being of children in its care. In response to the recommendations contained in the Berger report on compensatory matters and incorporating the previous recommendations of the Ombudsman, the government of British Columbia made a commitment to take action to assist former students who had been sexually abused while at Jericho Hill School. This included a commitment to continue and enhance the **Residential Historical Abuse Program** and the creation of the **Jericho**

[11] Berger, *supra* note 8 at 14.

Individual Compensation Program to provide financial compensation through an individual claim process.

The Residential Historical Abuse Program

The program has been in existence since 1992. The objective of the program is to provide intensive counselling and therapy to individuals who claim they were sexually abused while they were in a provincially operated institution or provincially supervised form of care. The program is available based on a simple application and verification of the individual's residency status at the time of the disclosed abuse.

Jericho Individual Compensation Program

The compensation for complainants recommended in the Berger Report was implemented in 1995 through the Jericho Individual Compensation Program. Financial compensation is being offered to individual Jericho Hill students who have endured pain and suffering because of sexual abuse based on the framework of the compensation scheme described by Berger. This is a three-tiered compensation framework, with awards ranging from $3,000 to $60,000[12]. A Compensation Consultant, fluent in American Sign Language (ASL), assists claimants in accessing the program and a Compensation Panel (composed of three members, one of whom is Deaf-blind) makes the decisions regarding compensation.

There are two noteworthy aspects of the compensation program. First, the applicant is not permitted to have an advocate appear with them or on their behalf in the application process. Second, although physical abuse or emotional mistreatment has been alleged to have occurred at Jericho Hill School, the program compensates former students only for pain and suffering caused by sexual abuse. It does not provide compensation to family members.

[12] See Table 2 on page 13.

The Process

Eligibility

Those eligible to apply for the Individual Compensation Program are Deaf, hard of hearing, Deaf-blind and blind students of Jericho Hill School who can establish to the satisfaction of the Compensation Panel that they were sexually abused at the School. The abuse could have occurred either on-site or off-site, but must be associated with attendance at or residence at the school while the government was responsible for their care and custody any time up to December 31 of 1992.

Standard of Proof

As a condition for making decisions about the claims, the Compensation Panel must be satisfied, based on the information presented in the claim, that there is a "reasonable likelihood" that the claimant was sexually abused at Jericho Hill School[13].

Compensation Consultants

The Compensation Consultants are a key element of the Jericho Individual Compensation Program. In order to assist the claimants of this Program, the Compensation consultants are:

- Fluent in ASL and other modes of communication used by Deaf, Deaf-blind and hard of hearing persons;
- Knowledgeable about Deaf culture;
- Knowledgeable about and experienced in dealing with sexual abuse;
- Skilled at interviewing traumatised individuals.

The role of the Compensation Consultants is to assist the claimant and the Compensation Panel, as a neutral resource in the compensation process. Thus, the role has been described as a 'friend of the process' rather than as an investigator. The Compensation Consultant has

[13] British Columbia, *Jericho Individual Compensation Program: Terms of Reference* (Victoria: Ministry of the Attorney General, 15 November 1996) at para. 17.

a particularly significant role in recording the claim of an individual who has never before disclosed sexual abuse.

The Compensation Consultants collect data about the nature, extent and impact of the sexual abuse for the individual and assists the claimant in assembling and presenting their story of sexual abuse to the Compensation Panel.

The Compensation Panel

The Panel is composed of three members (two hearing lawyers and a Deaf-blind therapist) whose purpose it is to examine individual claims and determine whether the claim qualifies for compensation and the level of pain and suffering endured by the claimant. Based on this determination, the Panel decides the level of compensation to be paid to the claimant.

The Panel's determination is made through either a documentary claim or an in-person hearing at the request of the claimant. The acceptance of the Panel's decision by the claimant requires that the claimant release the government from legal liability and that the government make a compensation payment and issue an apology to the individual.

Details of the Compensation Package

The decision of the Compensation Panel and the acceptance of compensation by the claimant produces the following sequence in the compensation process:

- The signing of a release by the claimant waiving any further claims against the Province
- The payment of compensation to the claimant, and
- An individual apology to the claimant by the government.

Once a claim has been reviewed and validated by the Panel, the determination of the level of compensation will depend on the extent and severity of the sexual abuse and the impact that it had on the claimant.

Compensation Chart

(Table 2)

	ABUSE	COMPENSATION AMOUNT
Tier 1	Sexual abuse[14]	$3,000
Tier 2	Serious Sexual Abuse	Up to $25,000
Tier 3	Sexual Abuse - Serious and Prolonged	Up to $60,000

There is no appeal from the Compensation Panel's decision regarding the claim and the amount of compensation[15]. The Panel may review its decision if the claimant requests the opportunity to provide new or additional information about the claim.

Costs Covered by the Compensation Program

Legal Fees

The program may pay certain (reasonable) legal fees if:

- the claimant retained a lawyer to commence a civil action; or
- consulted a lawyer to determine his/her opinion.

Such fees must have been incurred by the claimant prior to the beginning of the one-year time frame for applications and may be paid once the claimant has accepted compensation and signed the release.

[14] The description of "sexual abuse" for the purposes of assessing claims and determining compensation is found in *Terms of Reference*, *ibid.* at para. 18.
[15] *Ibid.* at para. 12.

In addition, each claimant may obtain independent legal advice prior to accepting compensation and signing a release. The Program will pay up to $1,000 for the combined cost of legal advice and ASL interpreters.

Financial Advice

The Program will cover the cost of ASL interpreters for meetings of the compensation recipient with a financial advisor of their choice but does not cover the cost of the financial advisor[16].

Program Statistics

Three hundred and seventy seven (377) applications for compensation have been made to date[17]. The time frame for the administration of the program was extended from June 30, 1998 to June 30, 2000. The deadline for submitting applications to the Program was September 30, 1998. As of September 20, 1999, the Compensation Panel has made decisions in 233 of those claims totalling $8.138 million in compensation, with an average award of $35,610. Of the decided claims, 38% are below $25,000, 44% are between $25 – $59,900 and 18% are at the level of $60,000.[18]

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[16] *Ibid.* at para. 21.
[17] 20 October 1999.
[18] This information was obtained from Mr. René deVos, Director, Jericho Individual Compensation Program, 18 October 1999.

3. New Brunswick

> *As a result of being sexually molested I always felt ashamed, worthless and used. As a result I entered into a life of crime. I felt like I had to punish myself, I felt it was my fault. I got into heavy drinking. I found this enabled me to kill the pain and forget all the bad things that happened to me in the Boys' Industrial Home, especially the sexual assault done by Sydney Robertson and others. I had to keep drinking so that I couldn't feel anything, especially the pain and memories…*[19]
>
> *There has been evidence particularly relating to the 1985 Toft matter, so-called, when several senior officials were aware of a bona fide complaint of sexual assault reported by a department employee and not one of them took any personal responsibility to see that a proper investigation was conducted. In my opinion, this is inexcusable and must be considered an unacceptable standard of responsibility and performance.*
>
> *It must not be forgotten that included in those victims and potential victims of the abuse, were young boys who had committed no criminal acts – boys without homes or parents and for whose care and keeping, the Province had assumed responsibility.*
>
> *The measure of the failure of these officials is the fact that not one of them even asked questions as to the age or identity of the victims. Not one of them even appeared to care!*[20]

Background

It was mainly the events that occurred at the Kingsclear Training School that drew public attention to the problems of institutional abuse in New Brunswick. For administrative policy reasons, the school was home to both juvenile delinquents and orphans. In 1985, a counsellor at the school reported an incident of sexual molestation involving an employee and a student. The employee was subsequently transferred but no additional action was taken. Some years later, one of his colleagues and three other boys filed complaints of sexual assault against the same individual. Investigations by municipal police and the RCMP failed to lead to any charges being laid and the employee was rehired at the same school to work at summer camp. Allegations of inter-ministerial interference then began to circulate and in September 1991 Karl Toft was arrested and charged with 27 counts of sexual assault.

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[19] *R.* v. *Robertson*, [1995] N.B.J. No. 7 (Q.B.) at para. 11, online: QL.

[20] New Brunswick, *Report of the Commission of Inquiry Established by Order-in-Council 92-1022* (New Brunswick: Attorney General, 17 February 1995) (Chair: The Hon. Richard L. Miller) at 91.

Twelve additional charges were laid in 1992. Toft pleaded guilty to 34 counts and was sentenced to 13 years in prison.[21]

Concerned with the system's inability to act on what had been thirty years of known incidents of paedophilia, the New Brunswick government set up a committee of internal and external experts to investigate the operation of the Attorney General's department. In December 1992, on the day that Toft was sentenced, the government set up a Commission of Inquiry conducted by Justice Richard L. Miller (former Justice of the Court of Queen's Bench in New Brunswick). What became known as 'the Miller Inquiry' investigated allegations of physical and sexual abuse at the New Brunswick Training School at Kingsclear, the Boy's Industrial Home and the Dr. William F. Roberts Hospital School.

The Boy's Industrial Home in St. John closed in 1962 and was replaced by the New Brunswick Training School at Kingsclear. The schools were operated by the New Brunswick Solicitor General as institutions mainly for minors who had committed crimes or who had become wards of the state and were awaiting placement in foster care. The Dr. William F. Roberts Hospital School was operated by the Department of Health and was a facility for mentally handicapped minors and other wards of the state.

Justice Miller released his report with recommendations in February 1995. He recommended a series of measures, including abandoning the practice of lodging young offenders with children requiring protection, strict monitoring of staff qualifications and training, setting up a special program for medical, psychological and psychiatric care and creating a no-fault compensation program.

On June 8, 1995, the New Brunswick government established a compensation program for the estimated 350 victims of sexual abuse by provincial employees. The program aimed to provide an alternate approach to settling legitimate claims. Lawyers from the New Brunswick Department of Justice and those representing the victims established a process through which settlements could be negotiated. The compensation provided by the Province of New Brunswick was available to those victims who were sexually abused by employees of the

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[21]C. Morris, Untitled News Article, *National General News – Canadian Press NEWSTEX* (4 December 1992).

Province of New Brunswick at the Youth Training School at Kingsclear, the former Dr. William F. Roberts Hospital School, and the former Boys' Industrial Home. This compensation program ended on August 30, 1996 but was re-opened on August 19, 1999 and extended to November 19, 1999 to accommodate claimants who had been unable to file a claim within the initial claim period.

Any claim made under the revised process was subject to the terms of the New Brunswick *Limitations of Actions Act*. The province agreed not to plead limitations in the initial process.

The Process

The process was established in an effort to provide victims with an alternative to resolving their legitimate claims rather than force them to litigate through the court system. Victims of sexual abuse are eligible for the benefits identified in the document where the Province is satisfied that the claimant has established that sexual abuse did occur. The determination requires a factual foundation. Both victims and the Province have access to evidence contained in the transcripts from the Miller Inquiry, on the basis of consent provided by the individual victim with respect to all information relating to them which was obtained in the course of the investigation and the conduct of the Inquiry. This information is not released to the public. Claimants execute these consents in order to allow the province access to all records relating to the individual. The Province has the authority to examine the victims or other persons either through an informal hearing or a formal discovery process at which the victim is sworn and a transcript prepared.

Once the Province was satisfied that liability for a claim is established, negotiations proceeded toward the determination of an appropriate amount for compensation in accordance with the benefits available. In the event that negotiations were unsuccessful, the victim has the option of recourse to an independent arbiter or to proceed with legal action in accordance with the Rules of Court of the Province of New Brunswick.

Arbitration

Victims had access to an independent arbiter on the following terms:

- Reference to arbitration will be mandatory if the victim requests that the claim be referred to an arbiter.

- The arbiter has jurisdiction to decide whether a sexual assault has occurred and, if so, the quantum of damages. Damages are proven in the same manner as a civil case.

- The process before the arbiter is similar to an informal hearing and is based on the process established by the former *Arbitration Act,* R.S.N.B. 1973, c. A-10. The Act permits flexibility and the lawyers had the option of agreeing to dispense with some features of the *Act* depending on the facts and circumstances.

- The decision of the arbiter will be binding subject only to judicial review pursuant to Rule 69 of the New Brunswick Rules of Court. Under the former *Arbitration Act,* there is no ability to appeal the adjudicator's decision.

Details of the Compensation Package

The maximum total compensation (all-inclusive) per claimant was $120,000.00. The average settlement amount was approximately $35,000.[22]

Psychological Counselling

The costs of receiving psychological counselling were provided at $5,000 per victim with further counselling costs to be approved by the Director of the Community Mental Health Centre. The number of individuals who are taking advantage of the psychological benefits

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[22] Information provided by Ms. Corinne Bedford, Solicitor, Legal Services, the Department of Justice, New Brunswick, 19 November, 1999.

under the process was estimated at approximately 50[23]. This process is handled entirely by the Mental Health Division of the Department of Health and Community Services.

Social Assistance Waiver

Any income which a victim earns in the year, whether it is income generated from the compensation amount or otherwise, was treated as income and may disqualify the individual from social assistance in accord with the applicable standards or regulations under the *Family Income Security Act*[24]. For those victims receiving compensation of less than $50,000.00, a limited social assistance waiver was provided, the effect of which was to deem the amount of compensation received by the victim not to be income for the purposes of the *Act*.

Financial Counselling

Financial counselling was offered to assist the victims in managing their awards in terms of planning and investment. The Province established a contact person to facilitate the provision of those services and generally assist the victims with inquiries. No claimants have taken advantage of this benefit.

Access to Vocational Training

With the assistance of the Department of Advanced Education and Labour, victims were provided benefits through the New Brunswick Community Colleges. As a threshold matter, all victims had access to assessment and counselling to determine the level at which the individual is functioning academically and also to discuss career options and community college programs that might be of interest or benefit to the individual.

For those victims who required academic upgrading before admittance to a community college program, the Province agreed to waive the fee of $100.00 for this service. For victims who wished to attend community college, the Province agreed to waive the tuition fees of $800.00 and further agreed to provide compensation or reimbursement for the costs of books and materials. Benefits would only be provided to the extent that the effect of the addition of

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[23] *Ibid.*
[24] S.N.B. 1994, c.F-2.01.

benefits would not cause the additional damages provided to any victim to exceed the amount of $120,000.00. Twelve victims requested educational benefits.

Structured Settlement

All victims had the option of receiving their compensation, in whole or in part, through a structured settlement. No victims have requested this option. Some claimants who are incarcerated have their lawyers manage their money until their release.

Legal Fees

With respect to any monies paid by the victim to his lawyer for legal fees, the amount in any case was prohibited from exceeding 20% of the total compensation paid to the victim, either through negotiation or awarded by the arbiter.

The New Brunswick Compensation Program - Claim Statistics (Table 3)[25]

Claims settled by agreement	226
Claims arbitrated with compensation awarded	5
Claims arbitrated with no award given	9
Claims withdrawn	2
Claims not applicable	0
Total cases settled to date	243
Total Late claims (where intent to file a claim or an actual claim has been initiated after the 1996 deadline for the receipt of claims)	98
New Late claims (since the re-opening of the process on August 19, 1999)	38

[25] Up-to-date as of 19 November 1999.

4. Nova Scotia - The Nova Scotia Compensation Program

> *[A former resident of the Shelburne School for Boys] also told us that MacDougall did everything to him as far as sex with a man is concerned. He masturbated him and performed oral sex on him. He also said that MacDougall performed anal sex on him so many times that [the boy] couldn't control his bowels. He was so sore at times that he would limp. He said that he reported what MacDougall was doing to him to the superintendent, the staff psychologist and his probation officer, but no one would believe him. Apparently, no one could believe that this type of thing could happen.*[26]

Background

Following numerous complaints and allegations of sexual and physical abuse from former residents at the Shelburne Youth Training Centre, on November 2, 1994 the Nova Scotia government announced three goals to deal with allegations of sexual abuse at these provincial youth institutions. The government's three goals were to:

1. Conduct a review of current practices to ensure that present policies and procedures are effective to ensure that abuse could not recur;
2. Determine what happened, who was involved, who knew what was happening and what actions were taken in response by those in authority;
3. And if the investigation revealed that abuse occurred for which the province was liable, an alternate dispute resolution mechanism was to be put in place to provide appropriate compensation to victims.[27]

The first objective was addressed by an institutional audit that looked at the safety of children within provincial institutions. The audit was conducted in early 1995 and reported in March of 1995.

The second goal was addressed on June 20, 1995 with the release of the ***Stratton Report***. In his report, Chief Justice Stuart Stratton (New Brunswick) conducted an investigation and

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[26] Nova Scotia, *Report of an Independent Investigation in Respect of Incidents and Allegations of Sexual and Other Physical Abuse at Five Nova Scotia Residential Institutions* (Halifax: Ministry of Justice, 1995) (President: The Hon. Stuart G. Stratton) at 10.

[27] *Ibid.* at iii.

documented a number of allegations of abuse. The investigation identified 89 allegations of abuse that had occurred at three provincial institutions.[28] Of the three, only the Shelburne Youth Centre is still open today. There were two other institutions investigated by the Stratton Inquiry, but no abuse was found to exist and the compensation program, as eventually established by the government, did not extend to those facilities. Responsibility for the events was attributed to the government departments involved and to elected officials. Mr. Justice Stratton blamed them for not providing sufficient resources to hire enough qualified staff to ensure decent living conditions for school residents and for turning a blind eye to their complaints.

The Stratton Inquiry concluded that, without making any determination as to legal liability, the Province of Nova Scotia had a moral obligation to respond to the claims of the victims. After a year of negotiation with approximately twenty lawyers representing the victims, the government agreed to a settlement in May of 1996 establishing a $33 million compensation fund. The program to compensate claimants was to be implemented through an alternative dispute resolution (ADR) process. Justice Minister Bill Gillis released a **Memorandum of Understanding** (MOU) on May 3, 1996.

The process became effective as of June 17, 1996. Compensation paid could vary from $5,000 for minor physical or sexual abuse to $120,000 for more serious cases. In 1996, the Department of Justice set up an **Internal Investigation Unit** (IIU) to investigate the allegations of abuse against current employees for disciplinary purposes. The RCMP established Operation Hope to handle the criminal investigation of alleged perpetrators.

From June 17, 1996 to November 5, 1997, the Compensation Program operated under the terms of the MOU. Because the program was "faced with mounting claims far above what had been expected, the discovery by the IIU of documents thought to have been destroyed, and increasing evidence that many of the claimants' statements were unreliable, Justice

[28] The Nova Scotia School for Boys (the Shelburne Youth Centre), the Nova Scotia School for Girls in Truro (the Nova Scotia Residential Centre) and The Nova Scotia Youth Training School at Bible Hill.

Minister Abbass put the program on hold on November 1, 1996 to assess the situation"[29]. Shortly after this, the Program Director resigned.

On December 6, 1996, the Minister announced certain modifications to the MOU including a requirement that all claims would be investigated by the IIU, the payment of awards in excess of $10,000 by instalment and an increase in the time the Province had to respond to a claimant's Demand from 45 to 120 days. There was also a slight modification to the File Review (appeal) process.

The Process

The Guidelines of the Compensation for Institutional Abuse Program of the Province of Nova Scotia

On November 6, 1997, the Minister released a set of Guidelines to govern the administration of the Compensation Program, the assessment of claims and the File Review process. The Guidelines establish that compensation is offered as an *ex gratia* payment and that the Program is managed and directed by the Department of Justice.

The procedure set out under these Guidelines may be summarised as follows:

1) the claimant gives a Statement and submits a Demand to the Province;
2) the claim is investigated and the Province provides the claimant with a Response; and
3) The claimant accepts the Province's offer, negotiates a settlement, or appeals to a File Reviewer for a final determination.

Details of the Compensation Package

Where a claim is validated, compensation is provided under this Program according to the compensation categories and counselling allotments as reproduced in Table 4. Compensation is based on the severity and frequency of abuse alleged by claimants and

[29] Briefing Note prepared by Barbara Patton, Nova Scotia, Department of Justice, "Compensation for Institutional Abuse Program" (6 November, 1997) at 2.

ranges from $0 - $120,000. The lowest category is Category 12, Minor Physical and/or Sexual Interference, where the maximum amount is $5,000.

(Table 4)[30]

Compensation Categories and Counselling Allotments

Categories	Description	Range of Awards ($)	Counselling Allotments
Category 1	Severe Sexual and Severe Physical	$100,000 - $120,000	$10,000
Category 2	Severe Sexual and Medium Physical Severe Physical and Medium Sexual	$80,000 - $100,000	
Category 3	Severe Sexual and Minor Physical Severe Physical and Minor Sexual	$60,000 - $80,000	
Category 4	Severe Sexual	$50,000 - $60,000	
Category 5	Severe Physical Severe Physical and Sexual Interference	$25,000 - $60,000	
Category 6	Medium Physical and Medium Sexual	$50,000 - $60,000	$7,500
Category 7	Minor Sexual and Medium Physical Minor Physical and Medium Sexual	$40,000 - $50,000	
Category 8	Medium Sexual	$30,000 - $50,000	
Category 9	Minor Sexual and Minor Physical	$20,000 - $30,000	$5,000
Category 10	Medium Physical Medium Physical and Sexual Interference	$5,000 - $25,000	
Category 11	Minor Sexual	$5,000 - $30,000	
Category 12	Minor Physical and/or Sexual Interference	$0 - $5,000	

A description of the categories of sexual and physical abuse for which compensation is provided under this Program is set out in Schedule "B" and is reproduced as Table 5:

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[30] Nova Scotia, Department of Justice, *Compensation for Institutional Abuse Program: Guidelines* (Halifax: Department of Justice, November 1997) Reproduced from Appendix "A" at 22.

Categories of Abuse[31]
(Table 5)

Category	Type of Abuse	Duration/Number of Incidents	Aggravating Factors
Severe Sexual	Anal intercourse, vaginal intercourse; sexual intercourse, oral intercourse	repeated, persistent, characterised as "chronic", "severe"	Verbal abuse, withholding treatment long-term solitary confinement, racist acts, threats, intimidation
Severe Physical	physical assault, with broken bones (i.e., nose arm, etc.), or other serious trauma, with or without hands (i.e. objects) with evidence of hospitalisation or treatment or permanent partial disability	repeated, persistent, characterised as "chronic", "severe"	Verbal abuse, withholding treatment, long-term solitary confinement, racist acts, threats, intimidation
Medium Sexual	Anal intercourse, vaginal intercourse, sexual intercourse, oral intercourse, masturbation or fondling, digital penetration	one or more incidents shorter duration numerous incidents repeated, persistent	Verbal abuse, withholding treatment, solitary confinement, racist acts, threats, intimidation
Medium Physical	Physical assault with broken bones (i.e. nose, arm, etc.) or other serious physical trauma, with or without hands (i.e. objects) with evidence of hospitalisation or treatment if available. Chronic beatings over a significant period of time	One or more incidents	Verbal abuse, withholding treatment, solitary confinement racist acts, threats, intimidation
Minor Sexual	Fondling, masturbation, oral intercourse, digital penetration	Fewer incidents; short duration	Verbal abuse, threats, intimidation, withholding treatment, racist acts, solitary confinement
Minor Physical	Physical assault, with or without hands (i.e. objects) (a.k.a. common assaults)	Isolated incidents, short duration	Verbal abuse, threats, intimidation, racist acts, solitary confinement
Sexual Interference	Watching, comments, intimidation, touching	Numerous incidents, repeated, persistent, one or more incidents, shorter duration	Verbal abuse, threats, intimidation, racist acts

[31] *Ibid.* as reproduced from Schedule "B" at 23-25.

Claimants are eligible to receive **interim counselling** of up to $5,000 from the day they enter the Program. Once a compensation award is made, a corresponding counselling award is assigned ranging from $5,000 - $10,000 depending on the category of award. Counselling is arranged through the Family Service Association in Halifax, which has a contract with the Department of Justice.

All compensated claimants receive a personal letter of **apology** from the Minister[32]. The Guidelines also include criteria for the payment for legal services[33] and set out hourly rates for Senior, Intermediate and Junior counsel. Once a claimant has signed a Release, all contingency fee agreements previously entered into are revoked and no further contingency fee arrangements were to be entered into between the claimant and counsel regarding compensation payable under the Program.

As of November 8, 1999, out of a total of 1260 claims, 1181 had been settled and the remaining 79 were at the stage of negotiation or arbitral review. The average compensation amount overall (since June of 1996) has been $30,902 per claimant, which includes an average amount of $5,945 for counselling and $24,957 for the base compensation award. Since January 1998 the average has declined to $14,438 with additional counselling costs averaging $5,220, for a total average compensation of $19,658.[34]

One of the problems that some lawyers see with the implementation of this agreement was that claimants were given a six month deadline within which to submit a demand or a notice of intention to file a demand to the Province. The only option after the December 18, 1996 cut-off date was to initiate a civil suit.

The Auditor General of Nova Scotia conducted an audit and review of the program in his 1998 Report.[35] The Auditor General concluded that:

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[32] *Ibid.* at 20, section 13.1.
[33] *Ibid.* at section 14.1 "All counsel shall be paid for the services described in Schedule I and in accordance with the tariffs attached as Schedule G".
[34] This information has been obtained by communication with Mr. Michael Dempster, Program Director, Compensation for Victims of Institutional Abuse, Department of Justice, Nova Scotia, 8 November 1999.
[35] Auditor General of Nova Scotia, *Report of the Auditor General 1998*, (Halifax: Office of the Auditor General, 10 December 1998) (Roy Salmon, F.C.A.).

- The standards, procedures and controls, which had been originally planned at the beginning of the Program, were implemented as the Program evolved. At the time of our audit, the Program was complying with the stricter guidelines and processes and generally functioning well.
- Because of the nature of the Program and the importance of negotiation in its development, we found it impossible to evaluate from an efficiency and economy perspective.
- We also acknowledge that the Department had to consider fairness to the victims of abuse in the development of the Program's processes and controls. One objective of the program was to avoid unnecessary additional hardship for individuals who have already suffered as a result of their experience with a government-operated institution. We cannot assess the value of achieving this objective and compare it with the additional cost, if any, of having claimant-sensitive processes and controls. In addition, our audit did not assess whether the Program achieved its goal with respect to fairness to victims, or any other involved individuals. That issue remains beyond the scope of our examinations.[36]

During the election campaign, the Conservatives promised to review the program "to ensure the process is fair and upholds the rights of both the victim and the accused"[37]. There is some concern that there were false accusations made by some of the victims. More than 60 claims already paid have been referred to the RCMP for investigation of suspected fraud. The RCMP, which has been told to expect to receive about 90 more cases, has charged only one former resident with filing a false claim[38]. Nova Scotia's new Minister of Justice, Michael Baker, announced on November 30, 1999 that retired Quebec Court of Appeal Judge Fred Kaufman will conduct an independent review of the government's response to institutional abuse. The review is expected to take up to 15 months to complete and cost $950,000[39].

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[36] *Ibid.* at 151-2.
[37] "Justice Minister Reviewing "Flawed" System that Rewarded Abuse Claims" *Halifax – Atlantic Regional News Canadian Press NEWSTEX* (11 September 1999).
[38] *Ibid.*
[39] Nova Scotia Department of Justice, *News Release*, "Retired Judge to Conduct Independent Review" (30 November 1999).

5. Ontario - Grandview Training School for Girls

> *The Grandview girls were considered, and were treated as, the 'dregs' of the training school system. They had been marginalized and targeted within a juvenile justice system legitimated by social attitudes rooted in class and gender bias. They were determined to be disturbed, promiscuous and unappreciative of actions effected 'in their best interests'. They were seen as lacking in intelligence and social skills, and unable or unwilling to capitalise on programs that would benefit them.*[40]

Background

The Grandview Training School for Girls (formerly the Ontario Training School for Girls) opened in 1932 in Cambridge, Ontario. Those who attended the institution were wards of the state. The institution housed an average of 120 girls annually with approximately one-quarter of them in Churchill House, a secure facility. The most significant period of abuse occurred in the mid-1960 to the early 1970's. After an investigation into alleged abuses suffered by the young girls at Grandview, the school was closed in 1976.

In 1991, two women who were being treated by the same psychologist told him of very similar experiences of abuse that occurred at Grandview. He was shocked by the details, introduced the two women and said that he would support them if they publicly revealed their stories of abuse. They made public appearances on television asking women who had been at Grandview to contact the police or the provincial government. In the summer of 1991, the Waterloo Regional Police Services and the Ontario Provincial Police began a joint investigation of claims of physical and sexual abuse that had occurred at Grandview. In December of 1992, a Victim Witness program site was established in Kitchener, Ontario with the express purpose of dealing with these incidents. While this was happening, a number of women had begun meeting to talk about their experiences and what they might do to bring the Grandview story to light. They formed the Grandview Survivors' Support Group (GSSG), hired legal counsel (whose services were paid for by the Ontario government) and later elected an executive.

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[40] C.T. Hayward, *Grandview Training School for Girls: A Study in the Social Construction of Institutional Abuse* (B.A. Thesis submitted to the Sociology Department, Queen's University at Kingston, undated) [unpublished]at 43.

Meanwhile, mediation for the Grandview settlements was authorised under a 1992 decision of the Ontario Cabinet to pursue an out-of-court strategy. In May of 1993, intensive negotiations began between the government and the GSSG. Over a period of ten months the executive of the GSSG and the group's legal counsel held extensive meetings with the Grandview Project Manager and legal counsel from the Ministry of the Attorney General to draft a compensation agreement.

The executive of the GSSG and their lawyer organised a voting process whereby members could vote to either accept or reject the agreement. There were 127 women who participated in this process and the agreement was ratified by over 80% of the members. The Agreement obtained approval by the Ontario government in April and was jointly announced in June of 1994[41].

The settlement package consisted of **general benefits** (intended to benefit society as a whole), **individual benefits** (for those individuals who claimed specific incidents of abuse) and **group benefits** (for all former wards of the institution). The total number of claimants who participated in the Grandview Agreement (as of September 1998) was 329[42].

Details of the Compensation Package

General Benefits

These benefits referred to components of the Agreement that related to society in general and included the following provisions for legislative and research initiatives.

- **Legislative Initiatives** – There was some suggestion of the passage of legislation to amend the *Limitations Act* in Ontario. There have been no legislative initiatives or policy development exercises completed in regard to

[41] Ontario, Ministry of the Attorney General, *Evaluation of the Grandview Agreement Process: Final Report* by D. Leach (Toronto: Ministry of the Attorney General, 1997) at ii.
[42] Ontario, Ministry of the Attorney General, *Wind Down Report: Lessons Drawn By the Abuse in Provincial Institutions Office About the Grandview and St. John's and St. Joseph's Agreement Processes (Final Report)* by D. Leach (Toronto: Ministry of the Attorney General, September 1998) at 7.

the issues surrounding institutional child abuse in Ontario as a result of the Agreement.

- **Research Initiatives** – The initiatives completed under this section include the research and evaluation of the Agreement that was provided by Ms. Deborah Leach. With regard to the desire to produce something educational, the government supported the production of a video entitled "Until Someone Listens" (a video and booklet about the experiences of Grandview Survivors, 1998).
- **A Healing Centre** – The idea of establishing a healing centre was discussed but not acted upon. Instead there was some money put aside for a needs assessment which eventually went back to the general revenue fund.

Group Benefits

No application was required for access to group benefits. These benefits were available to all former wards of Grandview. Individuals applying to have a self-inflicted tattoo removed were required to submit a sworn statement declaring that the individual was a former ward at Grandview.

Group beneficiaries had access to the following:

- A dedicated **Crisis line** – established by the Government of Ontario. It existed for four years and was closed March 31, 1997.
- **Self-inflicted tattoo/scar removal** – Any ward in attendance at Grandview for a period of six months who self-inflicted a tattoo or scar during that period could have it removed. There was a **Tattoo Removal Fund** of $120,000 and a **Scar Reduction Fund** of $50,000. Fifty-two women had used the Tattoo/Scar removal benefit as of December 1996.[43]
- **General Acknowledgement** – The Ontario Government delivered an apology to the Grandview survivors in the legislature in a speech presented by Attorney General Jim Flaherty on November 17, 1999.

[43]Leach, *supra* note 41 at 43.

Individual Benefits

Persons applying for individual benefits were required to complete a sworn application and supporting documentation including a declaration of independent legal advice. This was done to ensure that the individual understood the terms of the agreement and the legal implications of signing a release. On validation, the adjudicator was responsible to assess the claim for direct financial support and determine whether the claimant was the victim of abuse and/or mistreatment. If so, the extent of the harm was examined and the adjudicator was obligated to use the Matrix (as reproduced at Table 6 on page 33) which was included "as a guide only". The adjudicator had a limited discretion to fix the award within the range prescribed.

Those entitled to individual benefits had access to the following:

- **A financial award** for pain and suffering which ranged between $3,000 and 60,000 (according to the Matrix);
- **Major medical/dental** - In addition to any direct financial award for pain and suffering the adjudicator could give directions for the payment to the service providers by the Government of additional sums not to exceed in the aggregate $10,000. The purpose of this award was to cover exceptional medical or dental costs related to the consequences of the conduct accepted by the adjudicator as establishing validation where no insurance coverage is available[44].
- **Therapy/counselling** to a maximum of $10,000;
- **Residential treatment** to a maximum of $5,000 (e.g. for substance abuse or sexual abuse);
- Funding for **vocational or educational training** or upgrading, career counselling/psycho-educational assessment, financial or budget counselling;
- A **contingency fund** of up to $3,000 per validated claimant that provided flexibility to respond to individual need for items (e.g. dental work) not covered sufficiently by other benefits;

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[44]Agreement made as of 1994, between: *The Grandview Survivors Support Group and the Government of Ontario* (unpublished, 1994) [Hereinafter *Grandview Settlement Agreement*] at 4.2.10.

- An individual **acknowledgement/letter of apology** for the abuse or mistreatment sent by the Ontario government.[45]

Matrix[46]
(Table 6)

ACTS ALLEGED	HARM/INJURY	EVIDENCE/ PROOF	AWARD RANGE
Repeated serious sexual abuse (sexual intercourse anal or oral) & physical beating and threats	Continuing harm resulting in serious dysfunction. Adjudicator applies standards set out in Agreement	Possible: Medical, psychological, therapist, police reports, direct evidence of victim if credible, witnesses, documentary, conviction of perpetrator	$40,000 - $60,000
Physical abuse involving hospitalisation with broken bones or serious internal injuries	Harm sufficient to justify award must be demonstrated. Adjudicator applies standards set out in the Agreement	Same as above	$20,000 - $40,000 "mid range"
Isolated act of sexual intercourse, oral or anal sex or masturbation with threats or abuse of position of trust	Harm sufficient to justify award must be demonstrated. Adjudicator applies standards set out in the Agreement	Same as above	$20,000 - $40,000 "mid range"
No physical interference – forms of "mistreatment" i.e. cruel conduct that was prolonged and persistent. Confinement in segregation alone will not attract an award. Segregation may be justified in accordance with administrative authority. Abusive segregation cannot be.	Long term detrimental impact – conduct must not have been lawful or condoned. The nature of the harm will determine once proof of the acts are accepted whether a minimal recovery or a higher award.	Same as above	$3,000 on proof of acts of abuse or mistreatment. $10,000 - $20,000 where serious harm found by the adjudicator

The compensation program awarded benefits for physical and sexual abuse and mistreatment. In certain cases, psychological abuse and mistreatment were compensated but few awards were granted as a result of psychological abuse only.

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[45] *Ibid.* at para. 2.3.0. According to Daintree Norman, Policy Analyst, Policy and Violence Prevention Branch, Citizenship, Culture and Recreation, the Ontario Government, less than half the claimants received this acknowledgement. The claimants were sent a written form. If they wanted an acknowledgement, they were instructed to send the form back to the Ministry of the Attorney General.

[46] Reproduced from the *Grandview Settlement Agreement*, *supra* note 44 at para. 4.2.6.

Compensation and Average Award

The Government of Ontario was responsible for 100% of the financial award. The average financial award provided was $37,000. The total government expenditures on awards and benefits from 1992 to 1998 were $16.4 million.[47]

Grandview - Usage of Benefits

(Table 7)

Benefit	# of women who have used	% of all women who have used benefits
Therapy/Counselling	123	91.8
Tattoo/Scar Removal	52	38.8
Contingency Fund	132	98.5
Educational/Vocational Assistance	46	34.3
Financial/Budget Counselling	6	4.5
Total number of women who have used at least one of the Agreement benefits	134	100

The Process

The procedure for the validation of a claim was executed through an application and adjudication process. The only people who could apply for settlement were former wards of Grandview or its predecessor, the Ontario School for Girls. Applications for group or individual benefits were made to the Eligibility and Implementation Committee (EIC) consisting of a neutral chairperson, one representative from the government and one from the GSSG. The EIC would then review the information and determine if the applicant was a ward at Grandview. Once that determination was made, the EIC would then determine whether the criteria for accessing group benefits were met. The application and supporting documentation would then be submitted to the independent adjudicator for review, assessment and

[47] Leach, *supra* note 42 at 11.

validation. The adjudicator would then determine if the applicant was a valid claimant and whether the applicant met the criteria for accessing the individual programs.

The adjudicators were all women and were jointly chosen by the GSSG and the Government. According to the Grandview Agreement, in assessing a claim, the adjudicator was obligated to take into consideration a number of matters[48] including the following:

- How long was the claimant in residence?
- What was the age of the applicant?
- Were complaints made and, if so, when?
- By whom were the acts committed? What was the relationship of the claimant to the person?
- What was the frequency of the abuse and mistreatment? Was it an isolated act or a series of acts?
- What was the nature and severity of the abuse and mistreatment?
- What was the impact on the claimant? What was/is the consequence of the abuse? What treatment has been received for the injuries identified?
- Were criminal charges laid? Was there a conviction? Was the conduct criminal in nature?[49]
- Was the claimant a resident of Churchill House?

The standard of proof used was the standard for civil proceedings (the balance of probabilities). The EIC had to abide by the adjudicator's decisions on financial compensation but had the authority to bring specific questions to the attention of the adjudicator. The claimant had the obligation to satisfy the adjudicator that the conduct complained of was not minor and that the injury sustained was substantial and prolonged. The decision of the adjudicator was final.

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[48] *Supra* note 44 at para. 4.2.5.

[49] The Agreement went on to say, "It is understood that many of the hearings may be concluded before the on-going criminal investigations are concluded, and accordingly, no adverse inference should be made with respect to beneficiaries whose alleged perpetrators have not yet been charged or convicted. Furthermore, neither the laying of criminal charges nor a conviction is a precondition for certification and relief under this agreement." *Ibid.* at 4.2.5(H).

6. Ontario - St. John's and St. Joseph's - The Helpline Agreement

> *I saw many young children beaten up and strapped. I saw Brother — wake up young children and take them to a room to sexually assault them. I saw children handcuffed to a pillar in the basement. They would be pushed and kicked. I saw Brother — use a pool table stick to hit children if they would not have anal sex with him. Children were given cold showers then strapped. If I told any Brothers that another Brother tried to have sex with me, I would be strapped.*[50]

Background

Allegations of abuse at St. John's Training School in Uxbridge and St. Joseph's Training School in Alfred surfaced in 1990. A total of 28 Christian Brothers from both schools and one employee from St. Joseph's were charged with almost 200 counts of abuse ranging from assault causing bodily harm to indecent assault and sodomy. Although there had been allegations of abuse dating back to the 1940's and into the 1950's it seemed that most of the physical and sexual abuse occurred in the 1950's and 1960's.

Mr. David McCann, the chair and founder of Helpline (a group of 282 men who, as boys, attended either St. Joseph's Training School or St. John's Training School) proposed that the church, the two schools and the Ontario government be partners in addressing the needs of the men who were previously abused at the schools. The negotiation process began in 1990. The Agreement was reached after two years of intense negotiations between Helpline and the institutions responsible for their care.

The Helpline Agreement[51] was developed to compensate former students who were physically and/or sexually abused while attending the schools. Mediation for former students at the schools was authorised under a 1992 Ontario government Cabinet decision to pursue an out-of-court strategy.

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[50] B.C. Hoffman, *The Search for Healing, Reconciliation and the Promise of Prevention – The Recorder's Report Concerning Physical and Sexual Abuse at St. Joseph's and St. John's Training School for Boys*, a report prepared for the Reconciliation Process Implementation Committee, Ontario (place of publication unknown: Concorde Inc., 30 September 1995) at 70.
[51] *Ibid.*

The association of former students (Helpline) elected an executive, two of whom were selected to represent the entire group during the negotiations. The negotiations began in 1991 and ended with the production of the Reconciliation Agreement, the implementation of which commenced in January of 1993. Parties to the Agreement included the Government of Ontario, the Roman Catholic Church (i.e., the Archdiocese of Toronto and the Archdiocese of Ottawa) and the Ottawa Christian Brothers. While the Toronto Christian Brothers are actually named in the Agreement, they later withdrew their participation. The Toronto Brothers implemented a separate compensation package. Details of this package are not available as it is considered to be a private agreement between the former students and the Catholic Church.

Group 1 claimants numbered 354 and consisted of former students of either or both of St. Joseph's and St. John's who were members of Helpline or had made a statement to the police as of June 24, 1992. Group 2 claimants numbered 241 and comprised those who had joined Helpline or had made a statement to the police after June 24 but before April 1, 1993. The following is a summary of the results of the Program's Group 1 and 2 activities as completed on May 31, 1996:

- 565 Helpline claimants validated; 97% of all claimants validated.
- $14.5 million in cash benefits awarded to validated claimants.
- Highest amount paid to one victim: $107,944, Lowest, $2,500.
- Average – 33,700 per claimant in awards, benefits and support costs
- 468 persons received counselling valued at $1,570,561.
- 547 validated claimants accessed Opportunity Fund for educational, vocational and medical benefits.
- Total amount spent by RPIC institutional participants on process: $19 million.
- Institutional and personal Apologies issued to validated claimants.
- Recorder's Report memorialised events of abuse.
- Steps taken by institutional participants to prevent abuse in future.
- 232 Helpline members still to be processed under Memorandum of Understanding.[52]

With Helpline numbers continuing to grow, the participants agreed on March 6, 1996 to a Memorandum of Understanding that opened the way to reconciliation benefits for a class known as post-Group 2 (hereinafter referred to as Group 3). The applications for Group 3

[52] D. Roche, *Reconciliation: An Ongoing Process, RPIC Chairman's Personal Report,* (Ontario: Reconciliation Process Implementation Committee, 30 June 1996). This information is taken from the executive summary.

claimants were sent to the Abuse in Provincial Institutions Office of the Ontario Government in Toronto. The total number of Helpline claimants was approximately 1,200. The claims have all been resolved but there is some on-going counselling still being provided to victims.[53]

The Process of Program Delivery

The Claims Forms (for Group 1 and Group 2) were submitted to the Committee for review. Later applications were submitted directly to the Victim's Assistance Program, the Attorney General's Office of Ontario. The Claim form was then forwarded to the CICB (Criminal Injuries Compensation Board) designate with relevant comments within two weeks of receipt[54]. The CICB-designate, upon receipt of evidence and information from the claimant and review of Committee comments, if any, then determined entitlement to payment for pain and suffering for abuse as if the claim had been the subject of a submission under the *Compensation for Victims of Crime Act*[55] of Ontario. For claimants resident in Ontario, the CICB-designate would then make a determination, based on appropriate material, of counselling cost, including future counselling needs, for the benefit or the claimant and the claimant's family.

Additional Compensation for Pain and Suffering

For each validated claimant a contribution equal to 1.6 times the CICB-designate award was to be made by:

- The Toronto Brothers, where the validated claimant was abused at the St. John's Training School for Boys (not executed – the Toronto Brothers withdrew from the program);
- The Ottawa Brothers, where the validated claimant was abused at the St. Joseph's Training School for Boys;
- Where the validated claimant was abused by both the Toronto Brothers and the Ottawa Brothers they were compensated according to the proportion of time spent at each training school.

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[53] Information provided by Tom Marshall, General Counsel, Ontario Ministry of the Attorney General, 14 June 1999.
[54] *Helpline Reconciliation Model Agreement*, Between: Helpline, The Ottawa Brothers, The Toronto Brothers, The St. John's Training School for Boys, The Archdiocese of Toronto, The Archdiocese of Ottawa and the Government of Ontario (unpublished, 1992) at section 4.01.

- Each contribution was to be delivered to the Committee.

The average award for pain and suffering for Group 1 was $10,258 and for Group 2 was $8,129.[56]

Contribution to Provide Additional Opportunities

The Government of Ontario attempted to facilitate the ready access of validated claimants to all relevant government programs including literacy, counselling, employment upgrading and educational programs but without increased financial obligation. An Opportunity Fund was established and held in Trust by the Committee. The fund covered literacy and other educational programs, employment upgrading and medical-dental expenses. The participants (other than Helpline) agreed to contribute $3,000 per validated claimant. As of June 30, 1996, 547 validated claimants took advantage of this fund for total payments of $643,271.

Wage Loss

The Ottawa Brothers made a further contribution towards wage loss as a gesture of good faith toward those who claimed they had not been paid for menial and farm labour done while at the schools. Helpline representatives worked out a formula to disburse the available funds for Groups 1 and 2. Such disbursements totalled $283,500.

Counselling

The CICB-designate made counselling awards, where appropriate. In Groups 1 and 2, 468 clients (including, in some cases, the families of the victims) received counselling valued at $1,570,561. The Ontario government paid for in-province counselling which formed approximately 80% of the counselling costs. The Ottawa Brothers and the Archdioceses of Ottawa and Toronto paid for out-of-province counselling, representing the balance of the counselling costs.

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[55] R.S.O. 1990, c. C-24.
[56] Roche, *supra* note 52 at 7.

7. Ontario - Maple Leaf Gardens

> *Rather than threats, Stuckless used the irresistible lure of Maple Leaf Gardens to entice many of these vulnerable boys into his web, offering them access to its otherwise unattainable amenities in order to reduce their resistance to his sexual assaults. It does not diminish the seriousness of these offences that Stuckless used the magnetic aura of Maple Leaf Gardens rather than a more overtly forceful form of manipulation to prey on these children.*[57]

In 1997 Martin Kruze, a Toronto man, went public with his story of abuse at Maple Leaf Gardens. About 90 other people followed and named three employees of the Gardens as abusers. The management of the Gardens later settled out of court with many of those victims. In January of 1998, Gardens president Steve Stavro issued a public apology to the nearly 90 victims of sexual abuse at the hands of at least three employees spanning the 1960's to 1980's and held a weekend forum on abuse at the arena.

Lawyers representing the victims negotiated with counsel for the Gardens toward a resolution. With the help of a mediator the cases were all settled in the fall of 1998. The terms of compensation are confidential but they were based on the common law guidelines and ranged from $5,000 - $460,000.

Maple Leaf Gardens made some attempts to help the victims of child abuse. The measures included:

- The Gardens appointed an independent **Organiser of Support Services for Victims** to make referrals for counselling, if such was requested, and arrange for payment.
- A forum on child abuse was held at Maple Leaf Gardens in 1998. It was intended for victims, service providers, volunteers and families interested in abuse prevention. The forum could become an annual event.
- Security was increased at Maple Leaf Gardens. Measures included the installation of security cameras, electronic doors and screening of potential employees.
- Commitment to increase efforts to help raise money for child-abuse charities through events at the Gardens.

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[57] *R. v. Stuckless* [1998] O.J. No. 3177 (C.A.) at 116.

8. Ontario -- Reconciliation Agreement -- The Primary Victims of Father George Epoch and the Jesuit Fathers of Upper Canada -- Cape Croker

> *As children, many of the victims lived lives of neglect, poverty and abuse. They were children at risk whose needs were not met by their families, or they were children who were secondary to the addictive lifestyle of their parents. For some of these children, Father Epoch's abuse was part of a series of abuses that marked their young lives.*[58]

Background

Father George Epoch was a Jesuit priest who served the native communities on the Saugeen and Cape Croker reserves between 1971 and 1983. He was then transferred to Holy Cross Mission in Wikwemikong where he stayed until his death in 1986. Following accusations of child sexual abuse, the Jesuits began an investigation that revealed a vast framework of paedophilia that was set up by Father Epoch. The Jesuits accepted moral, but not legal, responsibility for these acts and in 1992 the leader of the Ontario Jesuit community presented a public apology on behalf of the Order. The Jesuits attempted to help the victims by providing financial assistance through an informal program called "Appropriate Assistance". In 1994, after four years and spending approximately $2 million, they withdrew their assistance after concluding that few concrete, positive results had been achieved.

A small group of victims then contacted them and negotiated an alternative solution. They negotiated the Reconciliation Agreement between the Jesuit Fathers of Upper Canada and the primary victims of abuse of Father George Epoch. The Jesuit Fathers are a Roman Catholic brotherhood who proposed the Reconciliation Agreement and who provided all the funding to negotiate and implement the Agreement. The primary victims are the women and men who allege that they were physically and sexually assaulted by Father George Epoch on the reserves. The validated claimants are residents of the Cape Croker, Saugeen and Wikwemikong reserves. It is not clear in the documentation when the abuses occurred, although the legal actions filed state that the abuses took place in the parish church or rectory.

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[58] M.L. Mussel, *In the Spirit of Healing – Recorder's Report Written for the Survivors*, a report prepared for the Reconciliation Implementation Committee as required under the Reconciliation Agreement between: The Primary Victims of Father George Epoch and the Jesuit Fathers of Upper Canada (place of publication unknown: October, 1995) at 3.

Legal counsel, one representing the Jesuits and the other acting on behalf of the victims negotiated the Agreement. A third party who had experience in developing agreements of this nature played an advisory role. The Reconciliation Agreement between the Primary Victims of George Epoch and the Jesuit Fathers of Upper Canada was ratified on October 31, 1994. The final date to file an application was May 1, 1995. The counselling program closed at year-end in 1998.

The Agreement was designed to facilitate the healing of individuals who, as young people, were physically and sexually abused by the late George Epoch. In the end, 83 of the 97 claims were accepted. There is currently some litigation surrounding the establishment of this Agreement with the case expected to go to trial in the year 2000.

The Process

Reconciliation Implementation Committee

This Committee was composed of one representative of the primary victims, one representative of the Jesuits and chaired by an independent and impartial third party. This Committee was responsible for appointing the Assessors.

Validation of claimants

An individual alleging abuse at the hands of Father Epoch submitted an information form citing personal information, past medical treatment, documentation of the abuse and a request for apology. The Assessor (or the standby assessor) then reviewed the claim. In order to validate the claim, the assessor must have interviewed the claimant.

The Assessor and a standby Assessor conducted the validation process. Certification by the Assessor that the claimant was physically or sexually abused by George Epoch, on a balance of probabilities, would validate the claim. If the Assessor did not validate the Claim, the claimant had the right to repeat the process with a second Assessor who was available on a standby basis. If the second Assessor certified that the claimant was physically or sexually abused by George Epoch, the claimant was validated. If the second Assessor also did not

validate the claimant, there was no access to a further appeal. After the final decision, the claim was then forwarded to the Committee for implementation.

The Jesuits funded the reasonable expenses of the validation process. The fees and expenses relating to the validation process were prohibited from exceeding the sum of **$40,000**.

Recorder

The Agreement provided that the Committee would appoint a recorder and that each person would have an opportunity to speak with the Recorder if they so desired. This Recorder would report to the Committee and outline the relevant history of the Epoch abuse. The Recorder was required to make observations and recommendations designed to assist in the prevention of future abuse in institutional settings[59].

Details of the Compensation Package:

Financial Compensation

The Jesuits paid the sum of **$25,000.00** to all validated claimants[60] for the abuse caused by George Epoch. This award was deemed to be in the nature of pain and suffering and represented non-pecuniary damages for the purposes of tax and Government social assistance/benefit programs.

Vocational Opportunity Fund

The Jesuits provided funds to the validated claimants to:

- upgrade education;
- obtain vocational training;
- attend to medical and dental needs.

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[59] *Ibid.*
[60] Information obtained in conversation with Mark Handelman, the lawyer who acted for the victims, February 1999.

The total amount of such awards for each validated claimant was prohibited from exceeding the sum of **$4,000**.

Individual and Institutional Apologies

Every validated claimant received an individual written apology from the Jesuit Fathers of Upper Canada. The apology was delivered to the validated claimant within (30) days of validation of the claim. A written statement of apology was sent to the Chiefs of the Band Councils at Cape Croker, Saugeen and Wikwemikong with a request that it be printed in Band newsletters. It was also sent to the principal newspapers serving each of those communities.

Counselling

The Agreement created a Counselling Advisory Group consisting of one representative from the Jesuits, one representative of the Primary Victims and one representative of the applicable Chiefs and Councils. The Jesuits committed through the Agreement the sum of **$500,000** (including $100,000 for discretionary counselling) for the professional fees and supporting services of a multi-faceted counselling program, over a period not to exceed three years. This amount was not spent at the end of the counselling period so the unspent funds were released for use in "education programs, for the prevention of sexual abuse"[61].

[61] *Reconciliation Agreement, Between: The Primary Victims of George Epoch and the Jesuit Fathers of Upper Canada* (unpublished, ratified October, 1994) at 3.06(b).

9. Ontario - Sir James Whitney School for the Deaf

> *He started at the Ontario School for the Deaf the next fall. Within a month, his dorm supervisor punched him in the head for being unable to communicate a request. The abuse continued every couple of months for more than a decade. One particularly vivid memory was when he vomited after eating stewed tomatoes. One of the staff members forced him to eat it from the floor, threatening to strap all the other students if he didn't.*[62]

The Alternative Dispute Resolution (ADR) Project was established to respond to former students of Sir James Whitney School for the Deaf (formerly the Ontario School for the Deaf) in Belleville, who allege sexual and/or physical abuse while in attendance at the school. The features of the project involve the implementation of a positive, pro-active, non-court settlement strategy to identify and support the needs of the affected students.

Background

The Ontario Ministry of Education and Training conducted a Review of Student Care in 1991. In response to the recommendations of the report, a number of policies and procedures have been developed and implemented to safeguard students. Advocates have been assigned to all schools as an independent safeguard for the students and there is a strict zero tolerance policy for any violation or abuse.

Representatives from both the Ministry of Education and Training and the Ministry of the Attorney General have been meeting with a group of former students of the Sir James Whitney School. The incidents are alleged to have taken place between approximately 1940 and 1980. The alleged abuse was physical and/or sexual in nature. Two former students of the school initiated the meetings. The ADR Project is the result of four years of discussion and negotiation with this core working group. Together, the Ministry staff and stakeholders developed the following settlement strategy.

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[62] Comments of a former resident of the Ontario School for the Deaf in Belleville, as reported in D. Girard, "Abuse Victim Ends Silent Suffering" *Toronto Star* as obtained through *The Canadian Press Wire Service* (16 July, 1998).

The Process

The ADR Project is mandated to operate from May 1998 to March 31, 2000. The deadline for application to the ADR Project is December 1, 1999 to afford those former students who wish to participate the opportunity to do so and to ensure that all adjudication is concluded prior to the end of the mandate (March 31, 2000).

By December 20, 1999, the ADR project had contacted approximately 310 former students of Sir James Whitney School for the Deaf. From the total of people contacted, 160 applications have been returned by those former students who are interested in participating in the process. Project staff have completed interviews with 115 claimants as of December 20, 1999 and of those, 25 are receiving counselling offered through the compensation program and 2 have requested assistance for educational upgrading. The adjudicator, Prof. Sanda Rodgers, and an Advisor to the ADR Project, Mr. Anthony Fenn, were appointed on July 29, 1999. The first 25 adjudicative decisions were received in November of 1999 and 50 completed files are awaiting a decision.

The ADR process includes a comprehensive investigative section to ensure that all claims of historical physical and/or sexual abuse are validated prior to adjudication. The Research Consultants from the ADR Project meet with each claimant to obtain the details of the allegation and to understand the impact that the abuse has had on the individual claimant. All sources of information available are then reviewed. This may include school, residential, and medical files; statements made to the police; interviews with witnesses and court transcripts.

The Alternative Dispute Resolution (ADR) Process
(Table 8)

Step 1 - Referral Initiated

Step 2 – Application Package Delivered to the claimant
- **Letter outlining the process**
- **Application Form**
- **Release of Information Form**

Step 3 – Application Received
- Letter of acknowledgement sent to claimant
- Research Consultant arranges time to meet the claimant with the interpreter

Step 4 – Research Consultant Interviews claimant
- Allegations are documented
- Provision of counselling services explained
- Provision of referrals for educational or vocational upgrading explained

Step 5 – Investigation/Validation
- Research Consultant investigates all sources of information available to validate the claim

Step 6 – Investigation Report
- Research Consultant submits a report of the findings to the Project Co-ordinator.

Step 7 – Allegations validated or not validated

Allegations not validated
- Allegations are not validated and there is no corroborating evidence
- Project co-ordinator advises claimant
- Courier delivers Letter to the claimant
- There is no appeal
- File kept open until February 2000

Allegations validated
- Allegations are validated and supported by corroborating evidence
- Project Co-ordinator submits the file to an independent adjudicator for determination

Step 8 - Adjudication Process

Financial Award Denied
- Adjudication Report received from the adjudicator
- Project Co-ordinator advises the claimant
- Courier delivers Letter to the claimant

Financial Award Decided
- Adjudication Report received from the adjudicator
- Project Co-ordinator advises claimant to seek independent legal counsel
- Government Release of Liability form signed
- Courier delivers Letter and Cheque to the claimant

Details of the Compensation Package

The claimants will be eligible to receive compensation in the form of counselling, referrals for education or vocational upgrading and financial awards to a maximum of $60,000. The claims will be assessed by the adjudicator based on the standard of proof applicable to civil proceedings (balance of probabilities).

(Table 9)

	ADR Project Compensation Package
Interpreter Fees	ADR Project pays interpreter costs for eligible claimants.
Counselling	**Up to a maximum of $10,000 is available for eligible claimants**
Educational Vocational Training	ADR Project facilitates referrals for upgrading for eligible claimants
Pain and Suffering Awards	**Up to a maximum of $60,000 is available for eligible claimants**
Legal Costs	Up to a maximum of $1,000 is available for eligible claimants to obtain a legal consultation prior to signing the Release of Government Liability form and accepting their award.

Alternative Dispute Resolution

STATISTICS -- As Of December 20, 1999

(Table10)

Potential claimants Contacted (Applications Mailed)	**310**
claimants (Applications returned by former students who are interested in participating)	**160**
Interviews Completed	**115**
Cases Currently involved in the Adjudication Process	**75**

10. Quebec - Duplessis Orphans - Ministerial Declaration

> *The first injury I suffered was not being taught, not getting an education to cope with adult life. Another was being treated as if I didn't exist, and not receiving even the slightest amount of human affection. Another was being mistreated, being powerless before my torturers. But the greatest injury was being called mentally retarded....*[63]

Background

The Duplessis orphans have been generally described as children who, before reaching twelve years of age, were placed in nurseries, orphanages, industrial schools or psychiatric institutions in Quebec between 1930 and 1965. Most of these children were made wards of the state and raised in large orphanages operated by various orders of the Catholic Church. It is estimated that there are approximately 3,500 survivors of these orphanages currently alive today[64].

Since the 1970's, hundreds of complaints were made to the Quebec Provincial Police involving 30 institutions, 240 complainants and 341 suspects. Most of the complaints alleged sexual and physical assault. The Attorney General of Quebec investigated the complaints and announced, on February 24, 1995, its decision not to proceed on any of the complaints. Criminal prosecutions were not undertaken for the following reasons:

- In 161 cases, the limitation period had passed;
- 52 suspects had died and another 5 were not able to present a defence because of illness and/or old age;
- In 44 cases, there was found to be insufficient evidence; and
- 42 suspects were not located or identified and 14 complaints were abandoned or the complainant died.[65]

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[63] Quebec Ombudsman, *The "Children of Duplessis": A Time for Solidarity* (Sainte Foy: Assemblée nationale du Québec, 1997) at the introduction.
[64] *Ibid.* at 3.
[65] *Ibid.* at 29.

Four private criminal complaints were filed against the same person in 1994. Only one criminal prosecution proceeded to trial and the complainant was successful in securing the conviction of his assailant[66]. The assailant entered a guilty plea to the charge of indecent assault and was given a six-month suspended sentence.

The Duplessis Orphans' Committee[67] (hereinafter, "the Committee") was founded in 1992. It is an advocacy group that works in partnership with community and health organizations, hospitals, various social services agencies and volunteers to help the Duplessis orphans. The organisation has approximately 160 members. The Committee made a failed attempt at instituting a class proceeding on behalf of the institutionalized orphans. Seven applications for funding were made to Quebec's **Fonds d'aide aux recours collectifs** in September 1996. The organisation conducted an assessment of their case and concluded that the application for certification as a class action would not be successful. They were, therefore, denied funding. Subsequent to that, court decisions confirmed that the cases were not suited to a class action[68]. The Committee then reassessed its strategies.

The Committee, and more than thirty other individuals brought their situation to the Quebec Ombudsman to ask for help in obtaining compensation for the harm they suffered during childhood when they were unjustly classified and treated as psychiatric patients. The Quebec Ombudsman studied the situation and produced a report in 1997 proposing a settlement including recommendations for a compensation package. The government considered the issue and made a settlement offer in March of 1999.

The Ministerial Declaration

On March 4, 1999, Premier Bouchard, on behalf of the Quebec government delivered a Ministerial Declaration in the National Assembly to the Duplessis orphans. The statement included recognition and acknowledgement that Quebec society has a moral obligation to the

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[66] *R.* v. *Georges Burton* (29 February 1996) 500-01-016545-946 (C.Q. (Crim.)).

[67] In French, the name is Comité des orphelins et orphelines institutionnalisés de Duplessis.

[68] The Court affirmed the judgement of the Fonds and went even further in stating that individual proof was necessary in establishing individual causes of action of misdiagnosis, assault and sexual assault. *Bertrand* v. *Fonds d'aide aux recours collectif*, Doc. No. 500-02-030332-931. The decision was also affirmed at the Cour superieure du Quebec in *Bertrand* v. *Cour du Quebec*, Doc. No. 500-05-002322-947.

orphans. In response to calls for a public inquiry, the Premier stated that their interests would be better served through assistance and support.

The following five measures were announced by the Quebec government to help the orphans recover their dignity:

1. The former orphans can obtain, without cost, a birth certificate for themselves indicating their current identity.
2. Access to certain government programs, social services support and income security will be facilitated. The Ministry will offer social assistance where cases favour this or return to social integration and other financial aid programs. The government will ease the person into social aid programs and simplify them.
3. To ensure that the Orphans' Committee can do its work, the government will provide a subsidy of $300,000 over three years.
4. The Government will create a special aid fund of $3 million to assist with other needs not covered by the previous measures. Representatives of the orphans and the government will administer this fund.
5. To co-ordinate government intervention, an inter-ministerial committee has been established. The Committee is presided over by the Deputy Minister of Citizenship and Immigration and its role is to act as liaison with the representatives of the orphans.

Additionally, the psychiatric evaluations of some orphans have been contested. The College of Physicians and Surgeons has been called upon to settle this issue.

The Committee has not accepted the offer made by the Quebec Government. To date the matter remains unresolved.